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Supreme Court, U.S.
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No. 84-6470

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

ROBERT DAVIDSON,

Petitioner,

v.

JOSEPH CANNON and
ROBERT JAMES,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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On February 19, 1985, this Court granted the petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit in Daniels v. Williams, ___ U.S. ___, 105 S. Ct. 1168 (1985). That grant of certiorari means that the Court will have before it two issues concerning how to define the boundaries of this Court's decision in Parratt v. Taylor, 451 U.S. 527 (1981): First, did Parratt determine that negligence by prison officials can give rise to a prisoner claim under § 1983 or did it merely hold that the existence of a state remedy does away with the possibility of a § 1983 action? Second, under what circumstances, if any, does a prisoner have a cause of action for negligence resulting in injuries to life and liberty, in contrast to deprivations of property?

Although those issues are framed in both Daniels and the present case, so that a reversal in Daniels would require a reversal in this case, there are important distinctions between the two cases which make this case, rather than Daniels, the ideal vehicle for resolving these Parratt issues. Unlike Daniels, the present case involves negligent state action which has a peculiar relationship to petitioner's status as a prisoner. And unlike the petitioner in Daniels, petitioner in the present case has no arguable state remedy for his claims against the negligent jailers.

For each of these reasons, a writ of certiorari should be granted in the present case and this case should be set down for argument together with Daniels v. Williams.

I. THIS CASE, LIKE PARRATT, PRESENTS A NEGLIGENCE CLAIM WHICH AROSE BECAUSE PETITIONER WAS IN CUSTODY

Because the petitioner in Parratt brought a claim which could be heard and remedied under state procedures, this

Court had no reason to discuss in depth what characteristics would distinguish a negligence claim which could be brought under § 1983 absent a state remedy. It is clear, however, that the claim in Parratt was not a generalized negligence claim unrelated to his custody as a state prisoner; if he had not been in custody, he could have arranged to receive his mail directly from the carrier rather than have it go through his custodians' hands. To the degree that the relationship of the tort to the victim's custodial status was material to the decision in Parratt, this case, rather than Daniels, provides the ideal vehicle for exploring the boundaries of the Parratt decision.

In both Daniels and the present case, the negligence of a state employee caused physical injury to a prison inmate. However, the difference between the type of negligence involved in the two cases is striking. Daniels is an undisputed case of "simple negligence." The inmate there slipped and fell on pillows and newspapers which a deputy sheriff had left lying on the stairs. Daniels was injured by the sort of careless conduct that could befall any ordinary citizen; in short, by negligence that was completely unrelated to the responsibilities imposed upon the sheriff by reason of the unique demands and circumstances of prison life. 748 F.2d at 231.

By contrast, petitioner was victimized by the type of negligence that can arise only within the restrictive confines of the prison walls. Davidson was injured because prison officials negligently failed to protect him from the forewarned physical assault of another inmate. Just as the state has complete control over an inmate's property, the case in Parratt, it exercises absolute authority over the inmate's ability to protect himself from the attacks of other prisoners. Within the

confines of the prison cell, a threatened inmate cannot flee, defend himself, or seek the protection of the courts. He is utterly dependent upon the state for security from intentional assaults by other prisoners. When the state negligently breaches its obligation to protect an inmate in this respect, the inmate suffers an injury which could not ever befall a citizen not in custody.

II. THIS CASE, UNLIKE EITHER PARRATT OR DANIELS, PRESENTS A RECORD IN WHICH IT IS UNDISPUTED THAT PETITIONER HAS NO REMEDY APART FROM § 1983

Although this Court granted certiorari in Parratt specifically to resolve the question of whether simple negligence could give rise to a § 1983 action, § 1983 relief was eventually denied on the ground that the prisoner had state remedies available for his claim. Although this Court's Parratt analysis and traditional principles of constitutional jurisprudence make it clear that Parratt established a general principle that negligence can give rise to a § 1983 violation absent a state remedy, majorities of the courts in banc in both Daniels and the present case have held that, at least where liberty rather than property interests are involved, Parratt did not establish a cause of action for the negligent deprivation of a prisoner's constitutional rights.[1] The grant of certiorari in Daniels, if it is to clarify the law in this area, must reach the question on which certiorari was granted in Parratt.

If, as petitioner believes, this Court in Parratt held that § 1983 would support a cause of action for negligent loss

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1. The majority of the court in banc in the present case, indeed, considered Parratt's language asserting that negligence could give rise to a § 1983 action mere dictum, see 752 F.2d at 826, a determination at odds with the decisions of Fourth, Fifth, Seventh, and Ninth Circuits.

of a prisoner's property absent an alternative state remedy, it also expressed a real concern that available state remedies be used to prevent § 1983 from becoming "a font of tort law" to be superimposed on existing state law. 451 U.S. at 544, quoting Paul v. Davis, 424 U.S. 693, 701 (1976). Accordingly, this Court will be under great pressure to decide the Daniels case on the same grounds on which it decided Parratt if an alternative state remedy is available.

Of course, the petitioner in Daniels argues, as does petitioner Davidson in this case, that the availability of an alternative state remedy should not foreclose a § 1983 suit where the injury has been to life or liberty, rather than property interests. If the Court resolves that question in Daniels' favor, that decision will require reversal in the present case as well. But the history of the cases in which this Court has granted certiorari to resolve the question of whether negligence can give rise to a § 1983 action -- from Procunier v. Navarette, 434 U.S. 555 (1978), through Baker v. McCollan, 443 U.S. 137 (1979), to Parratt v. Taylor, 451 U.S. 527 (1981) -- suggest that the direct answer to that question is more elusive than the Court or any of those who litigate in the federal system might expect.

If this Court does determine that the Parratt analysis applies equally to life and liberty as to property, there is a grave danger that the Court once more will be frustrated by the facts from handing down a definitive opinion on an issue it will have addressed four times. Although the petitioner in Daniels asserts that there is no meaningful remedy under state law, both the panel of the court of appeals and the court sitting in banc have ruled that the state remedy available under Virginia law

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CERTIFICATE OF SERVICE

I hereby certify that I am a member of the Bar of this Court and that on this 13th day of May, 1985, one copy of the Reply Brief in Support of Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit in the above-captioned case was to my personal knowledge, served on the following person by first-class mail, postage prepaid:

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and that she is the only person who must be served.

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satisfies any requirement of due process to which Daniels was entitled. 720 F.2d at 797-98; 748 F.2d at 232.

By contrast, there is no possibility of state relief for petitioner in this case. Both respondent and the court below concede that petitioner has no remedy under New Jersey law for the injuries which he sustained. Thus, the present case alone assures the Court and those who rely upon its decisions of the definitive answer to a pressing question which has four times caused the Court to grant review in cases it believed would present that question.

CONCLUSION

For all of these reasons, as well as the reasons set forth in his petition for certiorari, Robert Davidson respectfully requests the Court to grant his petition for a writ of certiorari.

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Dated: May 13, 1985